

COPY

March 14, 1955

SEP 22 1998

CONCORD, N.H.

James J. Barry, Commissioner
N. H. Department of Public Welfare
State House Annex
Concord, New Hampshire

Re: Status of County Officers in Reference
to OASI Referendum and Coverage

Dear Mr. Barry:

You have inquired by your letter of March 2, 1955, as to my opinion whether the county officers therein enumerated who are contributing members of the State Employees' Retirement System would be eligible to participate in an authorized county referendum respecting OASI coverage. It is my opinion that they would be eligible to vote in any such referendum.

The positions listed in your letter are, despite the varying methods in which they are filled, county offices. Opinion of the Justices, 73 N.H. 621; Brown v. Corriveau, 99 N.H. 22. It follows that those persons holding the offices are county officers, and as such are within the purview of the Social Security Act as employees. It is provided by section 218 (b) (3) of said act that "The term 'employee' includes an officer of a State or political subdivision."

With respect to the deputies listed the same conclusion is reached if it should be thought that they do not have the status of an officer of a county as they are not the private employees of their superior. See Brown v. Corriveau, supra.

I wish to make clear that this opinion is limited to the specific question raised by your letter. My opinion is limited solely to the conclusion that the designated officers are employees of a county within the meaning of the Social Security Act and should not be construed as expressing any opinion as to their status for any other purpose.

You further ask which of the officers would be covered by OASI in the event the employees of a county adopt its provisions

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by referendum. All of the officers would be eligible for coverage. However, in the case of Registers of Probate and their deputies legislation will no doubt be needed. While they are county officers as above noted, their salaries are paid by the State. This creates a rather anomalous situation in that that the employer's share of contributions would have to be paid by the State rather than the County. An appropriation to accomplish this would be needed. Another possible solution would be legislation defining the status of this county office for the purpose of retirement and OASI coverage.

Very truly yours,

Richard C. Duncan
Assistant Attorney General

RCD/aml